IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5014 OF 2005

ALONGWITH

CRIMINAL APPLICATION NOS. 4849/05, 4851/05, 4853/05, 4855/05, 4857/05. 4860/05, 4862/05, 5007/05, 5009/05, 5017/05, 5024/05 & 5032/05.

The State of Maharashtra .... Appllicant

versus

Vinod Moreshwar Vaidya & anr. ... Respondents.

Mrs. P.H.Kantharia APP for applicant in cri. appln. nos. 5014/05, 4849/05, 4851/05, 4853/05, & 4855/05.

Mrs. V.R. Bhosale APP for applicant in cri. appln. nos. 4857/05, 4860/05, 4862/05, & 5007/05.

Dr. F.R.Shaikh APP for applicant in Cri. appln. Nos. 5009/05, 5017/05, 5024/05 & 5032/05.

Mr. M.K.Kocherekar for Respondent no.1 in all matters except Cri.Appn. No. 4857/05.

Mr. S.P.Kadam for Respdt. no.2 in Cri.Appln. Nos. 4849/05, 4851/05, 4853/05, 4862/05 5024/05 & 5032/05.

CORAM; V.G. PALSHIKAR Acg.C.J.&
SMT.NISHITA MHATRE,J.

DATED; 28TH AUGUST, 2006.

P.C.:

1. All these applications arise out of criminal cases filed in the court of Judicial Magistrate, First Class, Mahad pertaining to mis-appropriation and criminal breach of trust in relation to certain monies belonging

to the bank and entrusted to the accused persons for execution of their duties. All these cases were tried together by the learned trial Judge and they were disposed of by common judgment as the evidence etc. was same for all these cases.

2. The accused persons were charged for offences under sections 408, 467, 468, 471 and 420 read with 34 of IPC. According to the prosecution, at the relevant time these accused persons were working with Mahad Co-operative Urban Bank which was carrying on banking business and having various branches, and one such branch existed in Poladpur also. According to the prosecution, between the period from 17-4-1980 to 16-9-1986 the accused Vinod Vaidya was attached to Mahad Cio-operative Urban Bank, Poladpur branch as branch manager and accused Suresh Desle was working in the same branch as cashier. According to the prosecution during this period these two persons with the common intention of mis-appropriating the property of the bank, namely money, created false entries, shown the amount as loan to fictitious persons and on disbursement appropriated that money. The learned trial Judge on appreciation of the evidence on record came to the conclusion that the prosecution has failed to prove any of the charges levelled against the accused persons.

3. According to the learned Judge, the bank has failed to prove item by item the nature of mis-appropriation or criminal breach of trust as committed by the accused. The special auditor who conducted the audit for this period, has not been examined. Person examined, on whom heavy reliance was placed, is P.w.8, who was assisting the special auditor, has no where stated that he was duly authorised to assist the special auditor in conducting the audit for the relevant period. He has been extensively cross examined and has deposed that he will not be able to pin point the transactions without looking to the documents involved. There was no demand either from the prosecution or from the accused for production of the documents and re-examination on the basis of those documents. The learned trial Judge taking into consideration the nature of cross examination as was faced by the witness P.w.8, lack of proved documents to establish mis-appropriation of property and other discrepancies existing in the evidence, came to the conclusion that the prosecution has failed to prove the charges as required by law. He therefore proceeded to acquit the accused persons in all these trials.

4. This order of acquittal is impugned in these

appeals/ applications for leave to appeal on the ground that findings recorded by the learned Judge are purverse as he has failed to note on certain material statement made by witness P.w.8 while appreciating his evidence. The evidence was appreciated in isolation and was not considered in totality of evidence which if so considered would point out the guilt of the accused. The learned Addl.P.P. took us to the evidence of P.w.8. Having considered that evidence we do not find any material therein, which was overlooked by the learned trial Judge. The special auditor is not examined and therefore the exact nature of mis-appropriation allegedly committed by the accused persons is not forthcoming to the evidence. In such state of affairs, merely because we can come to a different conclusion on re-appriciation of evidence of P.w.8, interference with the order of acquittal is not permissible. Hence application for leave is rejected.

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